

CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

ALL NIPPON AIRWAYS COMPANY, LTD.

DEFENDANTS

UNITED AIR LINES, INC.

EDL

(b) County of Residence of First Listed Plaintiff Japan
(EXCEPT IN U.S. PLAINTIFF CASES)

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
OF LAND INVOLVED.

Attorneys (If Known)

(c) Attorney's (Firm Name, Address, and Telephone Number)

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Scott D. Cunningham
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Los Angeles, California 90067

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input checked="" type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury - Med. Malpractice	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury - Product Liability	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	PROPERTY RIGHTS	<input type="checkbox"/> 430 Banks and Banking
140 Negotiable Instrument	<input type="checkbox"/> 330 Federal Employers' Liability		<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	PERSONAL PROPERTY	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 460 Deportation
151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 650 Airline Regs.	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input checked="" type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 660 Occupational Safety/Health	SOCIAL SECURITY	<input type="checkbox"/> 480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 385 Property Damage Product Liability	LABOR	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 490 Cable/Sat TV
160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury		<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 510 Selective Service
190 Other Contract			<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 550 Securities/Commodities/Exchange
195 Contract Product Liability			<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 585 Securities Challenge 12 USC 3410
196 Franchise			<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 590 Other Statutory Actions
			<input type="checkbox"/> 790 Other Labor Litigation	FEDERAL TAX SUITS	<input type="checkbox"/> 591 Agricultural Acts
			<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 592 Economic Stabilization Act
				<input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 593 Environmental Matters
					<input type="checkbox"/> 594 Energy Allocation Act
					<input type="checkbox"/> 595 Freedom of Information Act
					<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
					<input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332(a)

Brief description of cause: damage to aircraft owned by plaintiff caused by defendant's negligence

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23
DEMAND \$ 4,500,000+
☐ CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE

DOCKET NUMBER

DATE

June 28, 2007

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

NDC-JS44

FILED
JUN 29 PM 12:33
U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
MCD

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21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

EDL

23 ALL NIPPON AIRWAYS COMPANY, LTD.,
24 LTD.,

Plaintiff,

25 vs.

26 UNITED AIR LINES, INC.,

27 Defendant.

Case No. 07

3422

COMPLAINT FOR DAMAGES

DEMAND FOR JURY TRIAL

28 Plaintiff, ALL NIPPON AIRWAYS COMPANY, LTD. (hereinafter referred
to as "ANA"), by and through its attorneys, Condon & Forsyth LLP, for its
Complaint against defendant, UNITED AIR LINES, INC. (hereinafter referred to
as "UAL"), alleges upon information and belief as follows:

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1 **NATURE OF THE ACTION**

2 1. This is an action for negligence in which plaintiff seeks compensatory
3 damages, pre-judgment and post-judgment interest, attorneys' fees and costs for
4 damage to its property, a Boeing Model 777 commercial airliner.

5 2. Plaintiff's instant action arises principally out of the defendant UAL's
6 negligence, which directly and proximately caused monetary damages to be
7 sustained by ANA.

8 **THE PARTIES**

9 3. At all relevant times, ANA was and is a foreign corporation organized
10 and existing under and by virtue of the laws of Japan, with its principal place of
11 business in Tokyo, Japan.

12 4. At all relevant times, ANA was and is qualified to transact business in
13 the State of California.

14 5. At all relevant times, plaintiff ANA was and is the owner of the
15 aircraft damaged as a result of the defendant's negligence and other culpable
16 conduct.

17 6. At all relevant times, defendant UAL was and is a corporation
18 organized and existing under and by virtue of the laws of the State of Delaware,
19 with its principal place of business in the State of Illinois.

20 7. At all relevant times, defendant UAL was and is engaged in, and
21 qualified to transact business in the State of California, with an agent for the
22 service of process located at The Prentice-Hall Corporation System, Inc., P.O. Box
23 526036, Sacramento, California 95852.

24
25 **JURISDICTION**

26 8. This Court has subject matter jurisdiction over this action pursuant to
27 28 U.S.C. § 1332 (a) because plaintiff is seeking damages for more than \$75,000
28 and there is complete diversity of citizenship between plaintiff ANA, who is a

1 citizen or subject of a foreign state (Japan), and defendant UAL, who is a citizen of
2 the State of Delaware.

3 9. Defendant UAL is subject to personal jurisdiction of this Court
4 because defendant: (i) maintains an office and has a registered agent for service of
5 process in the State of California; (ii) is authorized to do business in the State of
6 California; and (iii) continuously and systematically conducts, transacts, solicits
7 business or engages in other conduct that creates substantial revenues within the
8 State of California. Moreover, defendant committed the tortious conduct giving
9 rise to this action within the state of California.

10 **INTRADISTRICT ASSIGNMENT**

11 **(Civil L.R. 3-5(b))**

12 10. Pursuant to Civil L.R. 3-2(c), this action is properly assigned to the
13 San Francisco Division as a substantial part of the events or omissions which give
14 rise to this claim occurred at the San Francisco International Airport in the County
15 of San Francisco.
16

17 **FACTUAL BACKGROUND AND GENERAL ALLEGATIONS**

18 11. On October 7, 2003, during a regularly scheduled passenger flight
19 departing from San Francisco, California, an ANA Boeing B777 aircraft (Reg. No.
20 JA709A) designated as ANA's Flight NH007 ("NH007"), sustained substantial
21 damage to its right wing as a result of a collision with a UAL Boeing B777 aircraft
22 (Reg. No. N222UA) designated as UAL's Flight UA809 ("UA809") (the
23 "Accident"). The Accident was caused by: (i) UA809's flight crew's negligent
24 operation of UA809; (ii) UAL's ground crew's negligent performance of a
25 pushback operation; and (iii) UAL's ramp controller's negligent performance of
26 his duties.
27

28 12. At the time of the collision, flight NH007 was under power and

1 taxiing along the center line of Taxiway A north of Gate G102.

2 13. At the time of the collision, flight UA809 was undergoing a pushback
3 operation from Gate G102 under tow of a UAL pushback tractor (tug) and crew.

4 14. NH007 had received clearance from UAL's ramp controller to push
5 back from Gate G95 and to continue towing to the engine start point.

6 15. NH007 called UAL's ramp controller for clearance to taxi and almost
7 simultaneously, UA809 called its ramp controller for clearance to commence
8 pushback from Gate G102. UAL's ramp controller cleared NH007 to proceed to
9 Spot 10 on Taxiway A and UA809 was instructed to standby.

10 16. UAL's ramp controller advised UA809 that he would call back in one
11 minute. Less than thirty seconds later, the ramp controller cleared UA809 to push
12 back as NH007 was progressing along the centerline of Taxiway A toward Spot
13 10.

14 17. NH007 was cleared by the Federal Aviation Administration ("FAA")
15 Ground Control to proceed past Spot 10 and taxi to and hold short of Runway One
16 Left.

17 18. UA809 was pushed back from Gate G102 and stopped where
18 UA809's right wing tip intruded into the path of Taxiway A and was in a position
19 to contact NH007's right wing tip at the time of the collision.

20 19. The right wingtips of both aircraft collided when NH007 was
21 progressing along the centerline of Taxiway A near Spot 10.

22 20. As a result of the foregoing, plaintiff ANA has sustained damage, for
23 which defendant should be held liable, in whole or in part, under theories of
24 negligence arising by virtue of the appropriate application of foreign, state and
25 federal law, including federal common law and the law of the state of California.

26 //

27 //

28 //

AS AND FOR A FIRST CAUSE OF ACTION
AGAINST DEFENDANT UAL
(Negligence – Property Damage)

21. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs 1 through 20, inclusive, of this Complaint with the same force and effect as if hereinafter set forth in full.

22. On October 7, 2003, the UA809 flight crew was engaged in a pushback operation and had final authority for UA809's movement.

23. UA809's flight crew had a clear and unobstructed view of NH007 during NH007's taxi and UA809's pushback.

24. UA809's captain was directly responsible for his aircraft and had the authority and obligation to order the pushback crew to stop the pushback.

25. UA809's flight crew was aware of NH007's position and destination during UA809's entire pushback operation.

26. UA809's flight crew was in direct communication with UA809's tug driver during the entire pushback operation. UA809's captain observed NH007 taxiing and communicated with UA809's pushback crew regarding clearance between the two aircraft.

27. UA809's flight crew operated UA809 so close to NH007 as to create a collision hazard.

28. UA809's flight crew operated UA809 in a careless or reckless manner when it parked a non-cleared airplane with its wing in an active taxiway and/or in the path of a cleared taxiing aircraft.

29. UA809's flight crew failed to see and avoid a collision when they allowed UA809 to be pushed into the path of a cleared taxiing aircraft. UA809's flight crew should have ordered the tug driver to stop the pushback operation prior to entering the path of NH007. Alternatively, UA809's flight crew should have ordered the tug driver to continue to push UA809 out of the hazardous position in

1 which it had been parked.

2 30. The negligence of defendant's flight crew proximately caused or
3 substantially contributed to the damages to plaintiff's aircraft.

4 31. As a result of the foregoing, ANA suffered damages in the form of
5 repair costs in the amount of \$3,106,233.49, and damages for loss of use in excess
6 of \$1,500,000, plus interest.

7
8 **AS AND FOR A SECOND CAUSE OF ACTION**

9 **AGAINST DEFENDANT UAL**

10 **(Negligence – Property Damage)**

11 32. Plaintiff repeats, reiterates and realleges each and every allegation
12 contained in paragraphs 1 through 20, inclusive, of this Complaint with the same
13 force and effect as if hereinafter set forth in full.

14 33. On October 7, 2003, the ramp controller at Terminal G of San
15 Francisco International Airport was an employee of defendant UAL. The Terminal
16 G ramp controller was responsible for directing all aircraft operating in Boarding
17 Area G and the surrounding non-movement areas.

18 34. NH007 relied on defendant UAL's ramp controller to: (a) provide
19 proper clearance and instruction for taxiing; (b) issue traffic advisories and safety
20 alerts; (c) maintain separation of aircraft operating in the vicinity of Terminal G;
21 (d) ensure that no collisions occurred; and (e) organize and expedite the flow of
22 traffic.

23 35. It was and is the primary purpose and obligation of the defendant
24 UAL's ramp controller to prevent a collision between aircraft operating in the
25 system and to organize and expedite flow of traffic in the areas under its control in
26 and about Terminal G.

27 36. It was and is the duty of defendant UAL's ramp controller to issue
28 traffic advisories and safety alerts.

1 37. It was and is the duty of defendant UAL's ramp controller to pay
2 attention to all aircraft and not focus on one area to exclusion of other.

3 38. Defendant UAL's ramp controller was and is concurrently responsible
4 with pilots to maintain separation of aircraft and avoid collisions and is
5 concurrently liable if he fails to do so.

6 39. Defendant UAL's ramp controller knowingly cleared NH007 and
7 UA809 to the same space.

8 40. Defendant UAL's ramp controller cleared UA809 to pushback less
9 than 30 seconds after clearing NH007 to Spot 10 despite knowing NH007 could
10 not possibly clear the area in 30 seconds.

11 41. NH007 reasonably believed Defendant UAL's ramp controller's
12 instructions were safe.

13 42. Defendant UAL's ramp controller provided no instructions to NH007
14 to stop at Spot 10 or as to when to contact FAA Ground Control. Defendant's
15 ramp controller did not instruct any plane to stop at a designated area and contact
16 FAA Ground Control during the relevant period.

17 43. Defendant UAL's ramp controller turned his attention elsewhere
18 during the relevant period, including to the opposite side of the airport at Gates 81-
19 85.

20 44. Defendant UAL's ramp controller was not watching UA809's initial
21 pushback while looking at Gate 80 and telephoning the foreman.

22 45. Defendant UAL's ramp controller cleared UA809 to pushback
23 without knowledge of NH007's position. Defendant's ramp controller should have
24 held UA809 until NH007 had cleared the area.

25 46. Defendant UAL's ramp controller had reason to know of the
26 likelihood of collision and should have issued a traffic advisory or safety alert.

27 47. Defendant UAL's ramp controller negligently failed to advise either
28 aircraft of traffic conditions and each other's respective positions.

1 48. Defendant UAL's ramp controller neglected his duty to avoid
2 collisions and failed to alert NH007 or UA809 of the other's proximity.

3 49. Defendant UAL's ramp controller failed to see what was visible and
4 discernible and issue warnings to UA809 to give the right of way to NH007.

5 50. Defendant UAL's ramp controller's failure to provide proper
6 instructions, warnings, traffic advisories, and safety alerts constituted negligence.

7 51. The negligence of the defendant's ramp controller proximately caused
8 or substantially contributed to the damages to plaintiff's aircraft.

9 52. As a result of the foregoing, ANA suffered damages in the form of
10 repair costs in the amount of \$3,106,233.49, and damages for loss of use in excess
11 of \$1,500,000, plus interest.

12
13 **AS AND FOR A THIRD CAUSE OF ACTION**
14 **AGAINST DEFENDANT UAL**
15 **(Negligence – Property Damage)**

16 53. Plaintiff repeats, reiterates and realleges each and every allegation
17 contained in paragraphs 1 through 20, inclusive, of this Complaint with the same
18 force and effect as if hereinafter set forth in full.

19 54. On October 7, 2003, the pushback of UA809 was performed by a
20 pushback crew consisting of employees of defendant UAL, including a tug driver
21 and a wingwalker.

22 55. Defendant UAL's tug driver had the responsibility for a safe dispatch
23 and clearance.

24 56. Defendant UAL's tug driver was responsible for determining the
25 number and position of wingwalkers for the pushback operation. Defendant's tug
26 driver had one wingwalker for the pushback located on the side of UA809 opposite
27 to the traffic on Taxiway A, including NH007.

28 57. It is the responsibility of the tug driver and the wingwalker to ensure

1 and maintain safety clearance for aircraft movement and to stop the push if there is
2 any question about clearance.

3 58. Defendant UAL's tug driver pushed back UA809 from Gate G102 and
4 stopped where UA809's right wing tip intruded into the path of Taxiway A and
5 was in a position to contact NH007's right wing tip at the time of the collision.
6 The tug driver was obligated to yield right-of-way before intruding on the taxiway.

7 59. Defendant's tug driver was contacted by the captain of UA809 during
8 the pushback operation and alerted to the presence of NH007. In response to the
9 captain's question about clearance, although the tug driver did not know the
10 location of NH007, he stated, "No problem, I've got you."

11 60. The tug driver looked to the right, away from NH007, and continued
12 pushing UA809. The tug driver failed to properly assess and respond to the
13 situation after being questioned by the UAL captain.

14 61. Defendant UAL's tug driver pushed UA809 for approximately one
15 minute, at least forty (40) seconds of which was after NH007 was in the direct line
16 of sight of the tug driver and the proximity of NH007 should have been obvious to
17 the tug driver. The tug driver pushed UA809 into the path of NH007 and then
18 stopped the push moments before the planes collided.

19 62. One wingwalker was insufficient and/or on the wrong side of UA809
20 to assist in a safe pushback operation. An additional wingwalker would have seen
21 NH007 and known UA809 was intruding into the taxiway, in unsafe proximity to
22 NH007.

23 63. Defendant UAL's tug driver, who had the best view of NH007, not
24 only failed to maintain a safe distance, he misled UAL's flight crew into believing
25 there was adequate clearance.

26 64. Defendant UAL's tug driver was negligent in parking UA809 where
27 its wing interfered with NH007 when it should have stopped the push earlier or
28 continued to push UA809 to its intended destination safely out of the way of

1 outbound traffic.

2 65. The primary cause of the accident was UAL's tug driver's
3 abandonment of UA809 while its right wing was intruding into the path of NH007
4 which was authorized by the FAA ground controller to proceed through Spot 10 to
5 its location at the time of the collision.

6 66. The negligence of defendant's pushback crew proximately caused or
7 substantially contributed to the damage to plaintiff's aircraft.

8 67. As a result of the foregoing, ANA suffered damages in the form of
9 repair costs in the amount of \$3,106,233.49, and damages for loss of use in excess
10 of \$1,500,000, plus interest.

11
12 **PRAYER OF RELIEF**

13 68. Based on all of the foregoing, ANA respectfully requests the
14 following relief:

15 69. Judgment decreeing defendant UAL primarily and/or actively caused
16 the Accident.

17 70. Judgment in the amount to be proved at trial to compensate ANA for
18 the full cost to repair NH007 that was damaged as a result of the Accident, as well
19 as interest accrued thereon.

20 71. Judgment in an amount to be proved at trial for all damages incurred
21 by ANA due to loss of use of NH007.

22 72. Such other and further relief as to the Court seems just and proper in
23 the circumstances.

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27 //

28 //

DEMAND FOR JURY TRIAL

73. Pursuant to Rule 38 of the Federal Rules of Civil Procedure and Civil L.R. 3-6, plaintiff hereby demands a jury trial in this matter.

Dated: June 28, 2007

CONDON & FORSYTH LLP

By: 

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